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**STRENGTHENING “INTERNATIONAL LAW OF
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INTERNATIONAL HUMAN RIGHTS LAW,
INTERNATIONAL CRIMINAL LAW AND
INTERNATIONAL HUMANITARIAN LAW. THE
DYNAMICS OF THE RIGHT TO WATER**

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Abstract: In the current paper, taking into account the transboundary rivers’ special importance and value, it is proposed that “International Law of Transboundary Rivers” should be established as an autonomous legal branch of International Law. Firstly, a legal framework for International Law of Transboundary Rivers is proposed, and then suggestions are made for its strengthening. It is argued that the governance of transboundary rivers is closely linked and promotes the maintenance of international peace and security, and all the other primary purposes of International Law. Moreover, the connection of International Law of Transboundary Rivers with

International Human Rights Law, International Criminal Law and International Humanitarian Law is suggested. In addition, the proposed framework is linked to the Resolution A/RES/64/292 (2010) “The human right to water and sanitation”. The human right to water and sanitation, and its crucial importance are analyzed. In the context of the paper, the connection of the right to water and sanitation with several rights already enshrined: i) in the European Convention on Human Rights, ii) in the American Convention on Human Rights, and iii) in the African Charter of Human and Peoples’ Rights is attempted. This suggestion is made in order to be possible for individuals and for states to legally invoke and judicially assert this right. By the combined invocation of the right to water and sanitation with these rights, it could become possible to utilize the relevant regional human rights instruments and mechanisms, for the legal assertion of the right to water and sanitation, and for the fair and equitable use of transboundary rivers and their resources.

Keywords: International Law of Transboundary Rivers; transboundary rivers’ governance; international peace and security; primary purposes of International Law; International Human Rights Law; International Criminal Law; International Humanitarian Law; the human right to water and sanitation;

regional human rights mechanisms.

Introduction-Objectives of the paper

In the current paper, the correlation between the protection and management of transboundary rivers with the maintenance of international peace and security, and with all the other primary purposes of International Law is attempted. At the same time, the link between their governance and the protection of human rights is highlighted. In addition, it is argued that transboundary rivers' issues are linked to International Criminal Law and to International Humanitarian Law. In the paper, a basic legal framework for the protection and governance of transboundary rivers is proposed, and then its strengthening is pursued through International Human Rights Law, International Criminal Law and International Humanitarian Law.

Furthermore, the human right to water and sanitation, the special value of its crystallization, and its potential are analyzed. The connection of this right with other human rights is proposed, in order to strengthen it and to make it justiciable. In the context of the paper, it is considered particularly important that individuals and states could invoke and legally claim the right to water and sanitation. For this reason, it is pursued to link the right to water and sanitation with rights already enshrined: i) in the European

Convention on Human Rights (1950), ii) in the American Convention on Human Rights (1969), and iii) in the African Charter on Human and Peoples' Rights (1981).

Throughout the ages, transboundary rivers' special importance and value is crucial, is recognized by people, and strong competitions can sometimes be developed for the use of transboundary rivers and their resources.

In my PhD Thesis (Balafouta, 2014; Balafouta, 2015), I had proposed to be established a separate branch of International Law, covering the legal regulation and governance of the entire transboundary river system, with river-side subsystems depending on the river or affecting its "life".

The proposed branch was called "International Law of Transboundary Rivers". It refers to International Law, but also to the national/domestic law of states; on the grounds that the river is an indivisible natural entity, independent of any existing political boundaries, and that best practices for resolving any related problem are almost always independent of these borders. The creation of an adequate, clearly defined, relevant legislative framework is a guarantee of fair and reasonable use of rivers and their resources. In addition, with the tight connection of this legal framework with International Human Rights Law, mechanisms for the protection and promotion of human rights can be utilized in the field of transboundary rivers' governance.

Furthermore, linking this framework with rules embodied in jus cogens or international customary law, would reinforce that framework and the obligation of international actors to comply with it.

Creating a Legal Framework for International Law of Transboundary Rivers

It could be argued that there is a legislative framework for the protection and governance of transboundary rivers (Balafouta, 2015). The following is an overview of selected international and regional legislative texts, which could form the relevant legislative framework. The regional texts mentioned are considered to have worked very effectively and have become international standards.

The existing legislative framework could, therefore, consists of the following texts:

- The United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted by the General Assembly of the United Nations on 21 May 1997, and entered into force on 17 August 2014¹,
- The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, opened

¹United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, (1997)
http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf

for signature in Helsinki on 17 March 1992 and entered into force on 6 October 1996²,

-The Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy³,

-The Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks⁴,

-The UNECE Convention on Environmental Impact Assessment in a Transboundary Context (The Espoo Convention), opened for signature at Espoo, (Finland), on 25 February 1991 and entered into force on 10 September 1997⁵,

-The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Aarhus Convention), adopted on 25 June 1998 in Aarhus, (Denmark), and entered into force on 30 October 2001⁶

²Convention on the Protection and Use of Transboundary Watercourses and International Lakes, (1992) <http://www.unece.org/env/water/text/text.html>

³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, (2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0060>

⁴Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, (2007) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007L0060>

⁵Convention on Environmental Impact Assessment in a Transboundary Context, (1991) http://www.unece.org/env/cia/about/cia_text.html

⁶Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, (1998) <http://www.unece.org/env/pp/treatytext.html>

- The Convention on Wetlands of International Importance especially as Waterfowl Habitat, (The Ramsar Convention), signed on 2 February 1971 in Ramsar, (Iran), and entered into force on 21 December 1975⁷, and
- The UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, signed on 16 November 1972 in Paris and entered into force on 17 December 1975⁸.

Suggestions for further strengthening the proposed Legal Framework for International Law of Transboundary Rivers

The aforementioned framework could be substantially strengthened by the reference to the Charter⁹ of the United Nations (UN), due to the relation of transboundary rivers' governance with the primary purposes of International Law-as these are enshrined in article 1 of the Charter-. Moreover, in the context of this paper, the connection of International Law of Transboundary Rivers with International Criminal Law and International Humanitarian Law is suggested. This connection would be particularly important, because their framework could be applied to transboundary rivers' issues. In addition, it is linked to the Resolution A/RES/64/292 (2010) "The human

⁷Convention on Wetlands of International Importance especially as Waterfowl Habitat, (1971) <https://www.ramsar.org/about/the-ramsar-convention-and-its-mission>

⁸Convention Concerning the Protection of the World Cultural and Natural Heritage, (1972) <http://whc.unesco.org/en/conventiontext/>

⁹Charter of the United Nations (1945) <http://www.un.org/en/charter-united-nations/>

right to water and sanitation”, as this could be connected with legislation for the protection and promotion of human rights.

These correlations are supported and suggested by the current paper, for the significant complementation and strengthening of the transboundary rivers’ legislative and institutional framework.

In particular, through the link to the UN Charter, the proposed legislative framework is particularly strengthened, as the Charter is the superior and the most binding legal text at international, regional and national level.

In addition, by linking the current framework to International Criminal Law and to International Humanitarian Law, the legislative and institutional framework for transboundary rivers is extremely strengthened. This could happen, as it will be possible to apply these two branches of International Law to transboundary rivers’ issues. Of particular importance is the fact that International Criminal Law is almost entirely comprised of *jus cogens* rules, and International Humanitarian Law constitute -for its most part- international customary law. It is worth emphasizing that *jus cogens* and international customary rules are fully binding and override the national law of states. All states of the international community are obliged to comply with them, even if these rules contravene their national law, including their Constitution.

Finally, by enriching this framework with the Resolution A/RES/64/292 (2010), it could be used and exploited the mechanisms for monitoring, implementing and promoting human rights at regional and international level.

The correlation between the governance of transboundary rivers with the primary purposes of International Law

Starting from the primary purposes of International Law, as enshrined in article 1 of the Charter of the United Nations, namely:

- i) the maintenance of international peace and security,
- ii) the peaceful settlement of international disputes,
- iii) the development of friendly relations among nations,
- iv) the international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and
- v) the respect for human rights and for fundamental freedoms for all without distinction;

it could be argued that the governance of transboundary rivers is closely linked and promotes these purposes.

In particular, constructive transnational cooperation concerning transboundary rivers is linked and promotes the maintenance of international peace and security. This is more clear and is demonstrated in the Middle East and North Africa region

(Balafouta, 2013). Transboundary waters have been and continue to be a factor of pressure and destabilization in this region over time. It could even be argued that there is an absolute link between the management of transboundary rivers, and the-jus cogens-prohibition of the threat or use of force enshrined in article 2 (4) of the Charter.

In addition, the pacific settlement of disputes, as laid down in article 33 (1) of the Charter, finds -or requires- direct application to the management of transboundary rivers. Furthermore, constructive cooperation in managing them is a sine qua non condition for friendly and harmonious relations between states.

It should be emphasized that environmental issues are contemporary international challenges, which can only be tackled by the international community as a whole, because they are extremely serious, they are hard to solve, and they are not limited by states' borders. It follows that targeted and coordinated international cooperation is necessary. Furthermore, environmental problems have humanitarian, economic, social, cultural impacts. Therefore, they also fall into matters which require international cooperation in accordance with the Charter. Finally, as it will be analyzed in Section 3.3., the access to safe drinking water and sanitation has been recognized by the UN General Assembly as a human right, that is essential for the full enjoyment of life and all human rights.

Linking International Law of Transboundary Rivers to International Criminal Law and to International Humanitarian Law

In a previous paper (Balafouta, 2018), I have argued that International Law of Transboundary Rivers has been connected -for the first time- with International Criminal Law and with International Humanitarian Law, taking into account situations and facts in the Middle East and especially in the armed conflict in Syria. In fact, war crimes, crimes against humanity, terrorism and fundamental human rights' abuses were committed in many ways, by both sides, in the Syrian war, with acts related to transboundary rivers and their resources. I have supported this, taking into account facts and related details from relevant UN Human Rights Council Resolutions and from the findings of the Independent International Commission of Inquiry on the Syrian Arab Republic, as recorded in many Periodic & Oral Updates and Reports of the Commission.

By analyzing the armed conflict in Syria, we could conclude that one of its causes was the water, while at the same time the management of transboundary rivers and their resources were used by both sides as a means of war strategy. It could be argued

that the armed conflict in Syria is a battle for water; water control provides strategic control to both cities and the province. These facts highlight -even more- the value of transboundary rivers. The fact that international crimes (namely crimes which offend the humanity as a whole and the “global collective consciousness”) were committed with acts related to transboundary rivers, indicates the crucial importance of rivers for the lives of people and for their fundamental human rights.

Furthermore, in the ongoing war in Ukraine we realise once again that water is being instrumentalized and is used as a means of war. In fact, civilian infrastructure, including water, sanitation and electricity networks have been destroyed during the war in Ukraine, severely hampering people’s access to vital services¹⁰.

“Up to 16 million people in Ukraine need water, sanitation and hygiene assistance. These include communities living in areas where water and waste-water infrastructure has been damaged and energy supply has been disrupted, and internally displaced people in collective centres and host communities”¹¹. Studying the wars in Syria and in Ukraine, we could also conclude -among several other things- that with acts related to water, and even more to transboundary rivers, fundamental human rights are violated. In the following Section (3.3.), the right to water and sanitation is analyzed, and its connection with many other human and peoples’ rights is suggested.

¹⁰<https://www.unicef.org/press-releases/14-million-people-without-running-water-across-war-affected-eastern-ukraine>

¹¹<https://reports.unocha.org/en/country/ukraine/>

The dynamics of the right to water. The human right to water and sanitation

The UN General Assembly Resolution A/RES/64/292 (2010)¹² “The human right to water and sanitation” recognizes the right to safe and clean drinking water and sanitation as a human right, that is essential for the full enjoyment of life and of all human rights. It, also, calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, -through international assistance and cooperation- in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.

The General Comment No. 15 (2002) “The right to water”¹³ of the UN Committee on Economic, Social and Cultural Rights states that the human right to water is indispensable for leading a life in human dignity, and a prerequisite for the realization of other human rights. It also states -among other things- that the human right to water entitles everyone to sufficient, safe,

¹²A/RES/64/292 (2010) “The human right to water and sanitation” (2010) <https://undocs.org/en/A/RES/64/292>

¹³General Comment No. 15 (2002) “The right to water” of the UN Committee on Economic, Social and Cultural Rights <https://www.unhcr.org/publications/operations/49d095742/committee-economic-social-cultural-rights-general-comment-15-2002-right.html>

acceptable, physically accessible and affordable water for personal and domestic uses. It highlights that an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. Additionally, the General Comment No. 15 (2002) requires the following factors concerning water: i) availability, ii) quality, iii) physical accessibility, economic accessibility, and non-discrimination, and iv) information accessibility.

In 2030 Agenda for Sustainable Development¹⁴, Goal 6 is entitled “Ensure availability and sustainable management of water and sanitation for all”. Subsequently, specific Goal 6 targets are indicated.

“6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all”.

“6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations”.

“6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes”.

¹⁴ <https://www.un.org/sustainabledevelopment/water-and-sanitation/>

Linking the right to water and sanitation to other human rights-Aiming to the utilization of the regional human rights mechanisms

In the current paper, it is proposed to link the human right to water and sanitation with other human and peoples' rights, in order to highlight its special value, enrich its content and empower it.

Initially, having regard to the Universal Declaration of Human Rights¹⁵, the International Covenant on Civil and Political Rights¹⁶, and the International Covenant on Economic, Social and Cultural Rights¹⁷; the human right to water and sanitation could be connected with the following rights:

- the right to life,
- the right to human dignity,
- the right to health,
- the right to adequate food,

¹⁵Universal Declaration of Human Rights (1948)
<http://www.un.org/en/documents/udhr/>

¹⁶International Covenant on Civil and Political Rights (1966)
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁷International Covenant on Economic, Social, and Cultural Rights (1966)
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

- the rights of vulnerable groups: women, children, the older people, people with disabilities,
- the right to education,
- the right to work,
- the right to a healthy environment, and
- the right to development.

Within the framework of this paper, I attempt the connection of the right to water and sanitation with several rights already enshrined: i) in the European Convention on Human Rights, ii) in the American Convention on Human Rights, and iii) in the African Charter of Human and Peoples' Rights. In this way, it would be possible for individuals and for states to legally invoke and judicially assert this right. The regional instruments and mechanisms for the protection and promotion of human rights would therefore be able to be utilized in the field of transboundary rivers.

Also, the combined invocation of the right to water and sanitation and of other rights -already enshrined in regional human rights instruments- could also be strengthened by the approach of evolutionary interpretation (Balafouta, 2018) of international and regional treaties.

From the European Convention on Human Rights¹⁸, the right to water and sanitation could be linked to the following rights

¹⁸European Convention on Human Rights
(1950) https://echr.coe.int/Documents/Convention_ENG.pdf

enshrined in the Convention:

- the right to life (article 2),
- the right to respect for private and family life (article 8),
- the prohibition of discrimination (article 14).

At the same time, from the Protocol to the Convention, the right to water and sanitation could be linked to:

- the right to education (article 2).

From the Protocol No. 12 to the Convention, the right to water and sanitation could be linked to:

- the general prohibition of discrimination (article 1).

From the American Convention on Human Rights¹⁹, the right to water and sanitation could be linked to the following rights enshrined in the Convention:

- the right to life (article 4),
- the rights of the family (article 17),
- the rights of the child (article 19),
- the right to equal protection (article 24),
- the progressive development (article 26).

From the African Charter on Human and Peoples' Rights²⁰, the right to water and sanitation could be linked to the following

¹⁹ American Convention on Human Rights (1969)

https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf

²⁰ African Charter on Human and Peoples' Rights (1981)

https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

<https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>

rights of individuals and peoples enshrined in the Convention:

- the prohibition of distinction of any kind (article 2),
- the right of every individual to equality before the law and to equal protection of the law (article 3),
- the right for respect of the life and the integrity of every individual (article 4),
- the right of every individual to receive information (article 9 §1),
- the right of every individual to work under equitable and satisfactory conditions, and to receive equal pay for equal work (article 15),
- the right to health (article 16),
- the right to education (article 17 §1),
- the right of every individual to take part in the cultural life of his community (article 17 §2),
- the rights of the family (article 18 §1),
- the rights of vulnerable groups: women, children, aged, people with disabilities (article 18 §3,4),
- the peoples' right to equality (article 19),
- the peoples' right to existence, economic and social development (article 20),
- the peoples' freedom of disposition of their wealth and natural resources (article 21),
- the peoples' right to their economic, social and cultural

development, with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind (article 22),

- the peoples' right to national and international peace and security (article 23),

- the peoples' right to a general satisfactory environment favourable to their development (article 24).

Therefore, by the combined invocation of the right to water and sanitation with the abovementioned rights -already enshrined in these fundamental regional conventions-, it could become possible to utilize the relevant regional human rights instruments and mechanisms, for the legal assertion and for the full enjoyment of the right to water and sanitation. It could become possible for an individual or a state to appeal to the European Court of Human Rights, or to the Inter-American Court of Human Rights, or to the African Court on Human and Peoples' Rights, for the violation of this right, within the framework of the relevant regional organizations. Moreover, in relation to the satisfaction of the right to water and sanitation, it is worth highlighting that the African Charter on Human and Peoples' Rights guarantees not only human but also peoples' rights and freedoms.

Conclusions

While the population of the Earth and water demand are increasing daily, the quality of river waters -through their multiple use and pollution- constantly deteriorates, and their quantity decreases -from inappropriate policies, especially for agriculture-.

Furthermore, competition between water users will continue to intensify, and this is a major destabilizing factor in international basins and especially in areas and periods of water scarcity. Having studied the war in Syria and the war in Ukraine, we realise in practice the geopolitical importance and the close connection of water management with the maintenance of international peace and security.

In this paper, taking into account the special value of the water, and the water insecurity and drought and water scarcity that are currently affecting the World, the following suggestions are made.

Initially, it is proposed that “International Law of Transboundary Rivers” should be established as an autonomous legal branch/field of International Law. Along with the particularly important environmental dimension of the rivers; with actions related to them, international crimes may be committed. In addition, from an hydrological point of view, their primary importance comes from their short renewability

rate, relatively to lakes and underground aquifers. For this legal field, an initial/basic legal framework has been proposed above, which could be further strengthened.

In particular,-as highlighted in the paper-the protection and governance of transboundary rivers is directly linked and promotes the primary purposes of International Law. This conclusion is very important, as it stresses the importance of transboundary rivers' governance. Moreover, the linkage of their governance to the purposes of International Law (as enshrined in Article 1 of the UN Charter) offers the possibility to apply the Charter -the superior legal text in the world- for the resolution of issues related to transboundary rivers.

At the same time, extremely important is the connection of transboundary rivers' issues with the jus cogens prohibition of threat or use of force under article 2 (4) of the Charter, which is the "cornerstone" of International Law.

In addition, the inclusion of these issues in the field of International Criminal Law indicates their importance, as it is recognized criminal character for violations of International Law of Transboundary Rivers. Similarly, their connection with International Criminal Law-which consists almost entirely of jus cogens rules, that create *erga omnes* obligations-provides a sufficiently rigorous framework, and strengthens International Law of Transboundary Rivers.

Furthermore, linking issues related to transboundary rivers' governance with International Humanitarian Law, enables the use of its -mostly- customary framework.

Thus, the necessity of the establishment and implementation of an adequate and coherent legislative framework for transboundary rivers' governance could be concluded.

Moreover, noteworthy is the linkage of International Law of Transboundary Rivers with International Human Rights Law. In the context of this paper, the connection of the right to water and sanitation with several rights already enshrined: i) in the European Convention on Human Rights, ii) in the American Convention on Human Rights, and iii) in the African Charter of Human and Peoples' Rights was attempted. This suggestion was made in order to be possible for individuals and for states to legally invoke and judicially assert this right. By the combined invocation of the right to water and sanitation and of other abovementioned rights, it could be possible to exploit the content and the mechanisms of implementation of International Human Rights Law for this right and for transboundary rivers' issues.

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